IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5393 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No : NO

2. To be referred to the Reporter or not? Yes. :

3. Whether Their Lordships wish to see the fair copy of the judgement? No : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No : NO

5. Whether it is to be circulated to the Civil Judge? No :

KRISHNAKUMAR G. DHOLAKIYA

Versus

ASSISTANT REGISTRAR OF SOCIETIES, RAJKOT

Appearance:

1. Special Civil Application No. 5393 of 2002

MR MIHIR H JOSHI for Petitioner No. 1-6

MR PR JOSHI, AGP. for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 25/06/2002

ORAL JUDGEMENT

1 Rule.

Mr.P.R.Joshi, learned Assistant Government Pleader appears and waives service of rule. At the

request of the learned Advocates for the respective parties, the matter is heard and finally decided today.

2 The petitioners are seeking registration of one Gyanganga Education Society under the provisions of the Societies Registration Act,1860. They made an application to the Assistant Registrar of Societies of Rajkot district who also happens to be Deputy Charity Commissioner of Rajkot Region, Rajkot. The said society also applied to the District Education Officer, Rajkot on 29/11/2001 seeking recognition for its private primary school for English medium under the provisions of Bombay Primary Education Rules, 1949. It is the say of the petitioners that in anticipation of the necessary registration and permission being granted the petitioners have invested an amount of Rs.154 lacs towards the land and building for the proposed primary school and the petitioners desire to grant admission for academic year 2002-2003 as the building is on the verge of completion. However, according to the petitioners in absence of registration certificate being issued under the Societies Registration Act,1860 the District Education Officer has rejected the petitioners application on 31/5/2002 stating that the registration certificate had not been furnished within the stipulated time.

3 It was contended on behalf of the respondents that taking into consideration the provisions of Bombay Public Trust Act,1950 with special reference to definition of Public Trust, under section 2(13) of the said Act read with Section 9 of the said Act, it was necessary for the petitioners to register themselves as a charitable trust before seeking registration under the Societies Registration Act. That vide communication dated 20/5/2002 (Annexure "E"), the petitioners had been specifically informed that the petitioners should produce registration under the Trust Act within a period of fifteen days to enable the respondents to proceed further with the application for registration under the Societies Registration Act. That this was, it was submitted, merely a show cause notice and no final decision had been taken.

4 Taking up the last contention first communication dated 20/5/2002, Annexure "E" does not in any way give an impression that it is a show cause notice. However, even if it could be treated as a show cause notice the petitioners have already submitted their response on 25/5/2002 as can be seen from Annexure "F" and despite the same the respondents have chosen not to grant registration under the Societies Registration Act, till

date.

5 In so far as the principal contention regarding applicability of provisions of the Bombay Public Trust Act is concerned, it is apparent that the definition Section i.e. 2(13) which defines the term 'trust' merely states that apart from an express or constructive trust for either a public or charitable purpose or both the definition also includes a society formed for charitable purpose and registered under the Societies Registration Act,1860. Thus, it is clear that it is only an enabling provision in as much as the definition includes a society which is registered under the Societies Registration Act, which is formed for a religious or charitable purpose, to be treated as a public trust for the purpose of Bombay Public Trust Act. This becomes more clear from the opening portion of Section 2 which uses phrase 'In this Act'. Similarly, reliance upon the provisions of Section 9 of the said Act which deals with 'charitable purpose' is also misplaced in as much as the said Section also opens with the phrase 'for the purpose of this Act'. Therefore, provisions of Section 9(1)(4) do not carry the case of the respondents any further.

6 During the course of hearing, learned Advocate for the respondents was specifically asked to point out whether there was any provision in the Societies Registration Act which stipulated that registration under the said Act would be available only provided the society is registered under the Bombay Public Trust Act prior in point of time. It was very fairly submitted that there is no such requirement under the Societies Registration Act. Sections 3 and 2 of the Societies Registration Act lay down the procedure and the requirements for seeking registration under the said Act and there is no other provision under the said Act, which would enable the respondents to insist that the petitioners should first be registered under the Bombay Public Trust Act before seeking registration under the Societies Registration Act. The position in law is well settled that unless and untill there is specific provision in a statute requiring incorporation of provisions of another statute it is not permissible to read the latter Act into the former. Hence, provisions of the Trust Act cannot be read into the Societies Registration Act.

6 In light of what is stated hereinbefore the respondent is directed to process the application made by the petitioners seeking registration under the Societies Registration Act without insisting for any registration under the Bombay Public Trust Act. In light of the fact

that application for registration had been submitted on 29/11/2001, the respondents shall process the same and grant registration, provided all other requirements are fulfilled, within the period of fifteen days from today.

7. In the result, the petition is accordingly allowed. Rule made absolute. No order as to costs. Direct service permitted.

Sd/-
(D.A.Mehta, J)

m.m.bhatt